

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.718 OF 2004**

Aftab Alam Abdul Hamid Ansari)
Indian Inhabitant, Adult,)
Age 36 Yrs. Occ. Driver, residing)
at Das Tower IInd Floor, Room No.4,)
Ist Gauthan Lane, Andheri (West),)
Mumbai - 400 058 (At present)
lodged in Central Prison Nasik)
Raod Central Prison Nasik))..Appellant.

V/s

The State of Maharashtra)
(At the instance of Nagpada)
Police Station)(C.R.No.345 of 1999))..Respondent

Mr. S.V. Marwadi with C.K. Talekar for the appellant.

Mr. B.H. Mehta, A.P.P. for the State.

**CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.**

DATE : 4th July, 2005

ORAL JUDGMENT: (Per R.C. Chavan, J.)

1. Being aggrieved by his conviction by Additional Sessions Judge, Greater Bombay, for offences of murder, dowry death and cruelty to his wife punishable under sections 302, 498A and 304-B of the I.P.C., the appellant has preferred this appeal.

2. Facts which led to prosecution of the appellant are as under:-

3. Appellant was married to Tahera about five years prior to the incident. They were residing together at Andheri with appellant's mother. It was alleged that while settling marriage, appellant's relations falsely represented that he was earning Rs 15,000/- or more per month when, in fact, he was idle. Appellant's relations had sold their flat to utilise money for business purpose. There used to be fights between husband and wife every day. It was alleged that appellant wanted Tahera to bring a sum of Rs 1 lakh from her father for setting him up in some work. Though Tahera was pregnant, fights continued. Eventually, on 25/10/1999, Tahera was admitted to Nair Hospital at about 3.45 a.m. with history of having consumed poison at about 2.40 a.m. She was pronounced dead.

4. Police were informed and on the report by Mohammad

Shabbir Nabi Bakth Shaikh, at about 10.45 a.m., an

offence was registered. After performing inquest, the dead body of Tahera was sent for post-mortem examination. Medical Officer conducting post-mortem examination preserved the viscera and reserved the opinion as to cause of death till the report of Chemical Analyser was received. Viscera was

accordingly sent to Forensic Science Laboratory which reported that viscera contained insecticide propoxur i.e. Baygon which led to death of Tahera. Medical Officer accordingly certified the cause of death to be cardiorespiratory failure due to propoxur i.e. Baygon poisoning. Police arrested the appellant as well as his other relations and on completion of investigation sent a charge-sheet to the learned Metropolitan Magistrate, Mumbai, who committed the case to the Court of Sessions on finding that the accused had committed offences which were triable exclusively by the Court of Sessions.

5. Charge of offences punishable under section 498A read with section 114, 304-B read with section 114 and 302 read with section 34 I.P.C. was framed against the appellant and three others viz. Mehmood Abdul Hamid Ansari, Smt. Perveen Mehmood Ansari and Ziaul Islam Abdul Hamid Ansari. Accused pleaded not guilty to the said charge and were, therefore, put to trial. In the course of trial, prosecution examined in all five witnesses. Upon consideration of evidence tendered before him and in the light of arguments advanced, the learned Additional Sessions Judge, Mumbai, convicted the appellant of an offence punishable under sections 498A, 302 and 304-B of the

I.P.C. and sentenced him to suffer R.I. for three years on the first count with fine of Rs 5,000/- and imprisonment for life on the remaining two counts with fine of Rs 10,000/- and Rs 5,000/- respectively. He proceeded to acquit the other accused persons of the charges levelled. The trial as against one Mushrat Begum Abdul Hamid Ansari had abated as she died during the pendency of the case before the Sessions Judge. Being aggrieved by his conviction and sentence, Aftab Alam Abdul Hamid Ansari has preferred this appeal.

6. We have heard the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State. In this case, though P.W. 1 - Hajrabai Mohd. Sabbir Khan, mother of the deceased, stated about misrepresentation that appellant was earning Rs 15,000/- per month and that he was idle, she did not state any thing about demand of Rs 1 lakh made by the accused from them or from her daughter. It is pertinent to note that parties are resident of Mumbai and P.W. 1 admits that Tahera used to visit her time and again. Absence of communication to her own mother about demand of Rs 1 lakh makes the version of P.W. 2 - Ilyas Husain Kazi that appellant had sought a sum of Rs 1 lakh from Tahera, unbelievable. P.W. 2 - Illyas Husain Kazi is

brother-in-law of Tahera. There is no reason for P.W.2 to know some thing which Tahera's own mother did not know. P.W.2 - Illyas Husain has admitted in his cross-examination that these incidents were not incorporated in his police statement. Therefore, it is safe to conclude that this story about demand of Rs 1 lakh is an after-thought.

7. While P.W.1 - Hajrabai states that there were fights every day between Tahera and her in-laws, the cause of quarrel is not stated to be any unlawful demand or demand for dowry. From the evidence of P.W. 1 - Hajrabai, it can be gathered that since the appellant was idle there may be strain in the matrimonial life which led to quarrels. It is also pertinent to note that, in cross-examination, Hajrabai accepted that her version that there used to be quarrels every day between appellant's family members was not to be found in her police statement. Thus, this story about fights appears to be an improvement or after-thought. P.W.1 - Hajrabai stated that a complaint about harassment had been filed by Tahera at Andheri Police Station. No such complaint has been placed on record to lend corroboration to the story that Tahera was ill-treated prior to her death.

8. P.W. 3 - Dr. Shailesh Chintaman Mohite conducted post-mortem examination and proved his post-mortem notes at Exhibit-13. Dr. Mohite stated that the case could be one of self poisoning also. In view of this statement of Medical Officer who conducted post-mortem examination, it would be reasonable to infer that his observations in the course of post-mortem were compatible with self poisoning as well as forcibly or deceptively poisoning Tahera. The learned Additional Sessions Judge has chosen to convict the appellant of the offences punishable under section 302 as well as 304-B I.P.C.

9. P.W. 4 - Dilip Ugale is the Investigating Officer who stated that he did not find any poison bottle at the spot. P.W. 5 - Police Inspector Dineshkumar Varma merely sought to know from the Medical Officer whether the victim was in a position to make statement and obtained requisite endorsement from the Medical Officer. It may thus be seen that there is no witness who had actually seen the victim being administered poison by the appellant. There is no circumstance to indicate that appellant would have administered poison to his wife. As recounted earlier, evidence of

victim's mother Hajrabai shows that there were disputes between the spouses but they were run of the mill type. There is no evidence about any previous complaint having been filed, though Hajrabai so claimed. Therefore, it is difficult to imagine that the appellant would have any motive to administer poison to the victim. Other links in circumstantial evidence like procurement of poison, or appellant's finger prints being found on any poison bottle inside the house are missing. Therefore, it is extremely difficult to sustain the view taken by the learned Sessions Judge that the appellant had committed murder of Tahera.

10. As as for conviction under section 304-B of the Indian Penal Code, the evidence is all the more deficient. There is no evidence about cruelty on account of unlawful demand by the appellant or any demand related to dowry. It may be seen that even at face value, the allegations of P.W. 2 - Ilyas Kazi would show that what appellant wanted was some money to set himself up in business. It has nothing to do with dowry. The Supreme Court in the case of Satvir Singh and others Vs. State of Punjab and another

reported in **(2001) 8 SCC 633** has observed in para 21

of its judgement as under:-

"21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

11. In any case, this evidence of P.W. 2 which has not been supported by Tahera's own mother P.W.1. is

an after-thought and thoroughly unreliable. In order to convict a person for dowry death, it has to be shown that the victim was subjected to cruelty or harassment in connection with any demand for dowry.

There is no demand of dowry as defined in section 2 of Dowry Prohibition Act.

12. While enacting section 304-B of the Indian Penal Code, legislature had also enacted section 113-B of the Evidence Act providing for drawing of presumption about causing dowry death. But, for drawing such presumption, it has to be shown that soon before death of woman, she had been subjected by such person to cruelty or harassment for, or in connection with demand for dowry. Now in this case, first, the demand for dowry itself has not been established. Secondly, there is absolutely no evidence to show that Tahera was subjected to cruelty or harassment soon before her death. In view of this, conviction for offence punishable under section 304-B I.P.C. cannot at all be sustained. As recounted earlier, there is absolutely no evidence about any cruelty. Therefore, conviction under section 498A I.P.C. also seems to be far fetched and cannot be sustained.

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13. Accordingly, we allow the appeal and set aside the conviction of the appellant for offences punishable under sections 302, 304-B and 498-A of the I.P.C. Appellant shall be set at liberty if not required in any other case. The amount of fine, if paid, be refunded to the appellant.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)